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S.A.No.437 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.01.2024

CORAM

THE HONOURABLE MR. JUSTICE P.B.BALAJI

**S.A.No.437 of 2018**

1.Palanisamy  
2.Chinnathayee  
3.Venkatachalam  
4.Kolandaivel  
5.Gowri  
6.Palaniyammal  
7.Pappathi  
8.Kunjan  
9.Murugan

...Appellants

Vs.

1.S.Ramana  
2.S.Lakshmanan (died)  
3.S.Thangaraju  
4.Mariammal

...Respondents

**PRAYER:** Second Appeal filed under Section 100 of the Code of Civil Procedure to set aside the judgment and decree dated 06.09.2017 in A.S. No.35 of 2016 on the file of the II Additional District Court, Salem confirming the fair and decreetal order dated 30.04.2015 in I.A.



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No.293 of 2014 in O.S. No.442 of 2012 on the file of the Principal Subordinate Court, Salem.

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For Appellants : Mr.D.Shivakumaran

For Respondents : Mr.A.Thiyagarajan  
for R1, R3 to R6

### **JUDGMENT**

The defendants in a suit for partition are the appellants before me. O.S. No.442 of 2012 was filed by the defendants on the file of the Principal Subordinate Judge, in which, a preliminary decree came to be passed. The said preliminary decree was accepted by the parties and no appeal was preferred by either of them.

2. The respondents 1 to 3 herein filed I.A. No.293 of 2014 for passing a final decree. The appellants have filed their objections to the report of the Advocate Commissioner citing their long possession and also mutation of revenue records, which according to the appellants were not considered by the Courts below.

3. The Second Appeal was admitted by this Court on 12.11.2018 and the following substantial questions of law have been framed:



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*"Are the Courts below correct in law in completely ignoring the objections raised by the petitioners for the Commissioner's Report and plan, while allotting respective shares in the final decree?*

*2. Are the Courts below correct in law in not appreciating the actual evidence of R.W.1 to effect that final decree may be passed after considering his objections to the Commissioner's Report, and misconstruing as if the respondents do not have any objection for passing final decree?"*

4. Heard Mr.D.Shivakumaran, learned counsel for the appellants and Mr.A.Thiyagarajan, learned counsel for the respondents 1, 3 to 6.

5. The learned counsel for the appellants Mr.D.Shivakumaran, would invite my attention to the findings of the trial Court as well as the appellate Court and contend that there has been total non application of mind, especially to the valid objections raised by the appellants to the report of the Advocate Commissioner, even before passing of the final decree. He would therefore, seek for interference under Section 100 of the Code of Civil Procedure.



6. Per contra, Mr.A.Thiagarajan, learned counsel for R1, R3 to R6 would submit that the appellants have themselves admitted the final decree proceedings. The first appellant in this Second Appeal has filed a suit in O.S. No.500 of 2021 on the file of the First Additional Subordinate Court, Salem. The copy of the plaint in the said suit has been furnished by the learned counsel for the respondents.

7. On perusal of the same, the first appellant, as plaintiff has filed the suit for partition and separate possession and in the said suit at Paragraph No.4, he has stated that :

*"IV. The plaintiff's father Kolandai gounder and Sidda gounder were brothers. They held the suit properties and other properties in common. Later after the lifetime of Siddha gounder Raman, Lakshmanan and Thangaraj filed a partition suit against the plaintiff and the defendants for division of the family property in O.S. No.442 of 2012, the said suit was decreed in their favour and a commissioner was appointed to divide the property. In the final decree proceedings that took place in I.A. No.293 of 2014 in O.S. No.442 of 2012 on the file of the*



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*Principal Sub Judge, Salem, the properties were divided in the final decree dated 30.04.2015, as per which the plaintiff and his brothers were allotted the orange marked portions which is shown in the final decree petition and the plan filed by the Commissioner which attained finality, they have taken possession of the suit property and enjoying it."*

8. I find from the said suit, the contesting respondents in this Second Appeal are not parties to the said suit. Thus the conduct of the first appellant clearly indicates that the appellants have accepted the final decree passed in I.A. No.293 of 2014 in O.S. No.442 of 2012.

9. The learned counsel for the respondents submitted that the said suit is pending and it is in a part heard stage. Therefore, the first appellant herein having filed a suit in O.S. No.500 of 2021 accepting the final decree passed in I.A. No.293 of 2014 in O.S. No.442 of 2012 would only indicate that they have virtually given up the challenge to the final decree proceedings and thus no adjudication would be required in the above Second Appeal.



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**P.B.BALAJI, J.**

10. Recording the above subsequent developments, the Second Appeal is dismissed. The appellants are at liberty to work out their remedies in the pending suit. There shall be no order as to costs.

**30.01.2024**

Index : Yes/No

Internet : Yes/No

rkp

To

1.The II Additional District Judge, Salem

2.The Principal Subordinate Judge, Salem.

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